

PROPOSED

State of California
AIR RESOURCES BOARD

Resolution 96-45

September 26, 1996

Agenda Item No.: 96-7-1

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, the Legislature found in the Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Act), Health and Safety Code section 44300 et seq., that facilities manufacturing or using hazardous substances may be exposing nearby populations to toxic air releases on a routine basis and that it is in the public interest to ascertain the nature and quantity of hazardous releases from specific sources which may create air toxics "hot spots;"

WHEREAS, the Act sets forth an Air Toxics Hot Spots Program (Program) to develop air toxics emission inventories and to assess the risk to public health from exposure to these emissions, and air toxics Emission Inventory Criteria and Guidelines are incorporated by reference in section 93300.5 of Title 17 of the California Code of Regulations in accordance with the Act;

WHEREAS, on November 14, 1988, effective December 15, 1988, the Board adopted the Air Toxics "Hot Spots" Fee Regulation (Fee Regulation) set forth in sections 90700 et seq. of Title 17 of the California Code of Regulations in accordance with Health and Safety Code section 44380(a), which assessed a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, local air pollution control districts (districts), and the Department of Health Services (hereinafter the Office of Environmental Health Hazard Assessment, or OEHHA) to implement and administer the Act;

WHEREAS, the Board has amended the Fee Regulation each year since 1988 to reflect changes in the emission inventory, the sources subject to the Act's requirements, status of facilities in the Program, and the State and district costs of implementing the Act;

WHEREAS, Health and Safety Code section 44380(a) was amended in 1990 to require that the Board adopt a regulation which requires all districts, except for districts that have submitted specified information to the Board by April 1 of each year, to adopt rules which assess a fee upon the operator of every facility subject to the Act in order to recover the costs to the districts, the Board, and OEHHA to implement and administer the Act, and this Fee Regulation was

amended accordingly on June 5, 1996, effective June 28, 1996;

WHEREAS, the amendments to the 1995-96 Fee Regulation approved by the Board on January 25, 1996, and adopted by the Board on June 5, 1996, set forth in sections 90700 et seq. of Title 17 of the California Code of Regulations in accordance with Health and Safety Code section 44380(a), provided for the assessment of a fee upon the operator of every facility subject to the Act in order to recover the costs to the Board, districts, and OEHHA to implement and administer the Act in fiscal year 1995-96;

WHEREAS, Board staff, in consultation with the districts and the Fee Regulation Committee originally convened pursuant to the 1987 Act, has developed amendments to the Fee Regulation for fiscal year 1996-97 which were discussed with the public at eight public consultation meetings;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), Part 1, Division 3, Title 2 of the Government Code;

WHEREAS, on August 30, 1996, the Legislature approved Assembly Bill 564, which, among other things, provides for exemption of facilities from fees if their priority scores are equal to or less than ten, as well as limits fees charged by a district for processing emission inventory updates;

WHEREAS, changes have been proposed to the originally-noticed text of the regulation based on information presented by the districts regarding costs of implementing the Act and facility Program categories, among other things, and to conform to the fee provisions of Assembly Bill 564;

WHEREAS, based upon the information presented by the staff and the written and oral comments received prior to and at the hearing, the Board finds that:

1. The proposed approach is appropriate as it continues to streamline the Program while maintaining sufficient resources to accomplish the most important Program elements. This is the second phase of the two-phased approach approved by the Board in January 1996. Phase I amended the Fee Regulation for Fiscal Year 1995-96 to exclude certain low priority facilities from fee schedules while lowering fees for all other facilities in the Program, thus reducing State costs. Phase II was initiated in July of 1996 when the Board approved the proposed amendments to the Emission Inventory Criteria and Guidelines Report. The proposed amendments will continue to further streamline the Fee Regulation for fiscal year 1996-97;

2. The ARB and OEHHA are proposing to further downsize their programs to reflect lower revenues that would result from excluding additional facilities in calculating the distribution of the State's cost;
3. Although the proposed approach will further downsize the Program, the ARB and OEHHA staffs, working with the districts, can continue to collect and evaluate necessary information in order to protect public health as mandated by reducing toxic air emissions;
4. The proposed amendments would continue to allocate State costs among the districts based on Facility Program Categories that reflect potential health risk priority;
5. The Imperial, Kern, Lassen, Santa Barbara, and Tuolumne County Air Pollution Control Districts (APCDs), the Great Basin Unified APCD, and the Mojave Desert, South Coast, and Yolo-Solano Air Quality Management Districts (AQMDs) have requested that the Board adopt their fee schedule, and have submitted the required information to the ARB on time;
6. The Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Mariposa, Modoc, Northern Sonoma, Placer, San Diego, San Luis Obispo, Shasta, Siskiyou, Tehama and Ventura County APCDs, the Feather River, Monterey Bay, and San Joaquin Valley Unified APCDs, and the Bay Area, Lake, Mendocino, North Coast Unified, Northern Sierra, and Sacramento Metropolitan AQMDs will be adopting district Program fee rules for fiscal year 1996-97;
7. The revenues to be assessed pursuant to the proposed Fee Regulation are reasonably necessary to recover the anticipated Program costs which will be incurred by the Board, the districts, and OEHHA to implement and administer the Act's provisions in fiscal year 1996-97;
8. The proposed Program costs include a permanent reduction in accordance with the five-year plan presented to, and endorsed by, the Board in 1993, and additional Program reductions which reduce the State's cost by over 65 percent compared to the fiscal year 1993-94 baseline for the five-year plan;
9. On the basis of a financial analysis conducted to indicate the economic impacts on affected facilities resulting from the fees proposed in this regulation, the staff has determined that the proposed amendments impose no noticeable impact on the profitability of California businesses and will not cause a significant change in employment, business creation, elimination, expansion, or business competitiveness. However, for some businesses operating with little or no margin of profitability, the

proposed amendments may have a significant adverse economic impact on the business, or on private persons directly affected by the regulation, including their ability to compete with similar businesses in other states, the creation, elimination, or expansion of jobs and businesses within the State; and

10. This regulatory action will not have a significant adverse impact on the environment and may indirectly benefit air quality by stimulating a reduction in emissions of both toxic and criteria pollutants.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves amendment of sections 90700-90705, Title 17, California Code of Regulations, including the appendix referenced therein, as set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to adopt the amendments to sections 90700-90705, Title 17, California Code of Regulations, including the appendix therein, after making them available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and after making any changes necessary if Assembly Bill 564 as approved by the Legislature does not become final law, and shall present the regulation to the Board for further consideration if he determines that this is warranted.

BE IT FURTHER RESOLVED, that the Board directs the Executive Officer to revise the Facility Program Categories as necessary to reflect needed revisions brought to the Board's attention through September 26, 1996 only, and to accept no further revisions after that date.

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Identification of Attachments to the Resolution

Attachment A: Amendments to Title 17, California Code of Regulations, sections 90700-90705 including the Appendix referenced therein, as appended to the Staff Report released August 9, 1996.

Attachment B: Staff's Suggested Changes to the proposed amendments referenced in Attachment A, distributed at the September 26, 1996 hearing.